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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/706,807

11/12/2003

Mark Kiff

5610

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25280

7590

10/30/2007

Legal Department (M-495)

P.O. Box 1926

Spartanburg, SC 29304

EXAMINER

JUSKA, CHERYL ANN

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

10/30/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/706,807	<b>Applicant(s)</b> KIFF, MARK	
	<b>Examiner</b> Cheryl Juska	<b>Art Unit</b> 1794	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 07 August 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 14-17 and 19-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 14-17 and 19-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Response to Amendment***

1. Applicant's amendment filed August 7, 2007, has been entered. Claim 22 has been amended as requested. Claims 1-13 and 18 have been cancelled. Thus, the pending claims are 14-17 and 19-25.
2. Said amendment is sufficient to withdraw the 112, 1<sup>st</sup> rejection of claims 22-25 as set forth in section 6 of the last Office Action (Non-Final mailed 03/08/07).
3. Additionally, the Declaration of Inventor Mark Kiff, filed in full on August 23, 2007, has been entered. Applicant's arguments (Amendment, page 6, 5<sup>th</sup> paragraph – page 8, 4<sup>th</sup> paragraph) supported by said declaration have been considered in full and found persuasive. As such, the 112, 1<sup>st</sup> rejection set forth in section 5 of the last Office Action is hereby withdrawn. Despite these advances, the present claims are not allowable in view of the following new rejection.

### ***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:  
  
The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
5. Claims 14, 16, and 22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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6. Said claims are indefinite because the parameters of the drying step are unclear. For example, does the drying step apply energy (e.g., heat) to facilitate drying? Or, does said drying step also encompass drying under ambient temperature for a period of time? In other words, does applicant intend to encompass a drying step comprising allowing the dyed fabric to rest for a few minutes at ambient temperatures, which will inherently dry a wet fabric “at least partially?” Additionally, it is noted that applicant has not limited the fabric resulting from the dyeing step to being “wet.” As such, does the claim encompass unfixed, dyed fabric which is not wetted-out and dyed with a dry paste?

***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 22, 23, and 25 are rejected under 35 U.S.C. 102(b) as being anticipated by US 4,290,766 issued to Burns, Jr. et al.

Burns disclose a process for sculpting a pile fabric by application of a fiber degrading composition (abstract). Said process includes contacting selected portions of a pile fabric with a sculpturing composition and heating said fabric to activate said composition (col. 1, line 63-col. 2, line 11). Said composition may be applied to a wet or dry pile fabric (col. 2, line 57-col. 3, line 4 and col. 4, lines 26-30). Said sculpturing composition may be applied in a pattern as a transparent composition or said sculpturing composition may be part of a dye or pigment

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composition (col. 4, lines 37-52). Burns teaches “the sculpturing composition may be applied to the fabric substrate before, during, or even after application of, but prior to heat setting, the various dyes to the fabric which may be applied in a pattern” (col. 4, lines 53-57). The pile fabric treated with dye and sculpturing composition may be heat-treated to fix the dyes and to activate the sculpturing composition (col. 4, line 66-col. 5, line 2 and col. 5, lines 37-39 and 47-50). After fixing the dye and activating the sculpturing composition, the pile fabric may be washed to remove any residual components of the sculpturing composition and any unfixed dye (col. 5, lines 63-67). Said pile fabric is preferably made of acrylic fibers but may also include other fibers such as polyester (col. 2, lines 12-30). The sculpturing composition includes one or more lower alkylene carbonates (col. 1, line 63-col. 2, line 11).

Hence, Burns discloses a process of sculpting (i.e., etching) a pile fabric provides for application of said sculpturing composition after application of dye, but prior to fixing said dye, on a wet or dry pile fabric. While a preferred method of Burns includes applying dye and sculpturing composition simultaneously with a jet dye apparatus (col. 6, line 25-col. 7, line 15), the reference also provides for other processes wherein the dye and sculpturing composition are applied separately. Note applicant’s claims do not limit the order of process steps. Also note that application of dye to one region and application of sculpturing composition to another region of the pile fabric will inherently produce a pile fabric having a differential pile height and pile color. Therefore, Burns anticipates applicant’s claims 22, 23, and 25.

***Claim Rejections - 35 USC § 102/103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 14, 15, 19, 20, and 24 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over the cited Burns '766 patent.

Burns teaches the invention of claims 14, 15, 19, 20, and 24 with the exception of the claimed difference in  $\Delta L^*$  values. However, it is reasonable to presume that said claimed values are inherent to the invention. Support for said presumption is found in the use of similar materials (i.e., pile fabrics, sculpturing composition, and dyes) and in the similar production steps (i.e., application of dyes to selected regions in a pattern and application of said sculpturing composition in a pattern) used to produce the sculpted pile fabric. The burden is upon the Applicant to prove otherwise. *In re Fitzgerald*, 205 USPQ 495. In the alternative, it would have been readily obvious to one of ordinary skill in the art to manipulate the application of dyes and sculpturing composition in order to provide an aesthetically pleasing pile fabric having a differential pile height and colored pattern. Therefore, claims 14, 15, 19, 20, and 25 are also rejected.

***Claim Rejections - 35 USC § 103***

11. Claims 16, 17, and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over the cited Burns '766 reference in view of US 3,849,159 issued to Palmer et al.

While Burns fails to explicitly teach use of a mask to selectively apply the sculpturing composition, said use is well known in the art of printing fabrics and sculpting carpet. For example, Palmer discloses a method for sculpting nylon carpet comprising applying the sculpturing composition via the well-known process of screen printing (col. 3, lines 7-13 and line 56-col. 4, line 3). Note screen printing inherently employs a “mask” to apply print compositions onto fabrics in a desired pattern. As such, it would have been readily obvious to one of ordinary skill in the art to employ a mask technique (i.e., screen printing) for application of the dyes and/or sculpturing compositions as taught by Palmer in order to provide the desired aesthetically pleasing pattern. Thus, claims 16, 17, and 21 are also rejected.

### ***Conclusion***

12. The art made of record and not relied upon is considered pertinent to applicant's disclosure.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cheryl Juska whose telephone number is 571-272-1477. The examiner can normally be reached on Monday-Friday 10am-6pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached at 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

14. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished

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applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*/Cheryl Juska/*  
Primary Examiner  
Art Unit 1794

cj

October 28, 2007